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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE SHEET METAL)	NO. <u>C 07 3204 PJH</u>
WORKERS HEALTH CARE PLAN OF NORTHERN)	
CALIFORNIA, SHEET METAL WORKERS PENSION)	
TRUST OF NORTHERN CALIFORNIA, SHEET METAL)	
WORKERS LOCAL 104 VACATION, HOLIDAY)	<u>COMPLAINT</u>
SAVINGS PLAN; ANTHONY ASHER, TRUSTEE,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MTB INC, a California corporation)	
)	
)	
Defendant.)	

Plaintiffs complain of defendant and for a cause of action alleges that:

1. Jurisdiction of this Court is founded upon Section 301 (c)(1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)] and Section 502 of the Employee Retirement Income Security Act of 1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C. §1132), in that defendant has violated a collective bargaining agreement and certain Trust Agreements, thereby

COMPLAINT

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1 violating the provisions of ERISA and the provisions of the
2 National Labor Relations Act of 1947. This action is also brought
3 pursuant to the Federal Declaratory Judgment Act (28 U.S.C. §2201
4 et seq.) in a case of actual controversy between plaintiffs and
5 defendant, and for a Judgment that defendant pay fringe benefit
6 contributions in accordance with its contractual obligations.

7 2. Plaintiffs Boards of Trustees of the Trust Funds
8 named in the caption (hereinafter "Trust Funds") are trustees of
9 employee benefit plans within the meaning of §§3(1) and (3) and
10 §502(d)(1) of ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1),
11 and a multiemployer plan within the meaning of §§3(37) and 515 of
12 ERISA, 29 U.S.C. §§1002(37) and §1145. Plaintiff Anthony Asher is
13 a trustee. Said Trust Funds are authorized to maintain suit as
14 independent legal entities under §502(d)(1) of ERISA, 29 U.S.C.
15 §1132(d)(1).

16 3. Plaintiffs are informed and believe and thereupon
17 allege that defendant, MTB, Inc., a California corporation,
18 resides and does business in Penngrove, California. Performance
19 of the obligations to pay fringe benefits set forth in the
20 collective bargaining agreement is in this judicial district.
21 ERISA specifically authorizes Trust Funds to bring this action in
22 the district where the plans are administered, 29 U.S.C.
23 §1132(e)(2); the plans are administered in the Northern District
24 of California.

25 4. Each and every defendant herein is the agent of each
26 and every other defendant herein. Defendants and each of them are
27 engaged in commerce or in an industry affecting commerce.

28 5. At all times pertinent hereto, defendant was bound

1 by a written collective bargaining agreement with Sheet Metal
2 Workers Local Union No. 104, a labor organization in an industry
3 affecting commerce. The aforesaid agreement provide that defendant
4 shall make contributions to the TRUST FUNDS, on behalf of
5 defendant's employees on a regular basis on all hours worked, and
6 that defendant shall be bound to and abide by all the provisions
7 of the respective Trust Agreements and Declarations of Trust of
8 said TRUST FUNDS (hereinafter the "Trust Agreements").

9 6. The Trust Funds rely upon a self reporting system.
10 Defendant has unique knowledge of the amounts of contributions that
11 it is liable to pay each month, and has a fiduciary obligation to
12 accurately report the amount to the Trust Funds.

13 7. Defendant has breached both the provisions of the
14 collective bargaining agreement and the Trust Agreements above
15 referred to by failing to complete and send in monthly reports
16 and/or to pay all moneys due thereunder on behalf of defendant's
17 employees to the TRUST FUNDS. Said breach constitutes a violation
18 of ERISA (29 U.S.C. 1002, et seq.) and of the National Labor
19 Relations Act of 1947.

20 8. Pursuant to the terms of the collective bargaining
21 agreement there is now due, owing and unpaid from defendant to the
22 TRUST FUNDS on account number 358200/666 and 358201/666
23 contributions for hours worked by covered employees for the months
24 of May 2006, December 2006 and April 2007 and, liquidated damages
25 and interest which are specifically provided for by said
26 agreements. The total amount due is unknown at this time;
27 additional monthly amounts will become due during the course of
28 this litigation and in the interest of judicial economy, recovery

1 of said sums will be sought in this case. Interest is due and
2 owing on all principal amounts due and unpaid at the legal rate
3 from the dates on which the principal amounts due accrued.

4 9. Demand has been made upon said defendant, but
5 defendant has failed and refused to pay the amounts due the TRUST
6 FUNDS or any part thereof; and there is still due, owing and unpaid
7 from defendant the amounts set forth in Paragraph 8 above.

8 10. An actual controversy exists between plaintiffs and
9 defendant in that plaintiffs contend that plaintiffs are entitled
10 to a timely monthly payment of trust fund contributions now and in
11 the future pursuant to the collective bargaining agreement and the
12 Trust Agreements, and defendant refuses to make such payments in
13 a timely manner.

14 11. The Trust Funds do not at this time seek to audit the
15 books and records of defendant. The only issue raised in this
16 complaint is defendant's failure to complete and file voluntary
17 monthly reports and pay the contributions due. The Trust Funds
18 seek to obtain a judgment for any outstanding delinquent
19 contributions based on defendant's reports and to reserve the right
20 to audit defendant for this or any other unaudited period.

21 12. The Trust Agreements provide that, in the event suit
22 is instituted to enforce payments due thereunder, the defendant
23 shall pay court costs and reasonable attorneys' fee. It has been
24 necessary for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL
25 CORPORATION, as attorneys to prosecute the within action, and
26 reasonable attorneys' fee should be allowed by the Court on account
27 of the employment by plaintiff of said attorneys.

28 WHEREFORE, plaintiffs pray:

COMPLAINT

1 1. That the Court render a judgment on behalf of
2 plaintiffs for all contributions due and owing to the date of
3 judgment based upon unaudited reporting forms, plus liquidated
4 damages provided for by the contract, interest at the legal rate,
5 reasonable attorneys' fees incurred in prosecuting this action and
6 costs.

7 2. That the Court enjoin the defendant from violating
8 the terms of the collective bargaining agreements and the Trust
9 Agreements for the full period for which defendant is contractually
10 bound to file reports and pay contributions to the TRUST FUNDS.

11 3. That the Court reserve plaintiffs' contractual right
12 to audit defendant for months prior to judgment, and in the event
13 of such audit, collect any additional sums which may be due.

14 4. That the Court retain jurisdiction of this cause
15 pending compliance with its orders.

16 5. For such other and further relief as the Court deems
17 just and proper.

18 DATED: June 14, 2007

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

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21 By: /s/Michael J. Carroll
Michael J. Carroll
Attorneys for Plaintiffs
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